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**JOINT EMPLOYER LIABILITY DOES NOT EXTEND TO
CO-EMPLOYER'S ILLEGAL DEDUCTIONS**

The Westin hotel recently avoided joint employer liability where its co-employer staffing agency illegally deducted immigration fees from employee wages, resulting in take-home pay far below minimum wage. *Andro Tolentino v. Starwood Hotels & Resorts Worldwide, Inc., et al.*, No. WD75115 (Mo. App., April 2, 2013).

The Westin contracts with temporary staffing agencies to secure much of its housekeeping needs. From 2005 to 2009, housekeepers were employed and paid by Giant Labor Services, Inc. The Westin paid GLS \$5.00 per room cleaned. GLS then compensated its housekeepers at \$3.50 per room.

In February 2008, GLS hired Andro Tolentino as a housekeeper. Shortly thereafter, the Westin asked GLS to re-assign him elsewhere. For Tolentino's last pay period, GLS paid Tolentino the standard rate of \$3.50 per room for a net total of \$372.34. But, GLS then deducted from his paycheck \$372.34 to reimburse itself for pre-paid H-2B visa fees. The result was Tolentino received nothing for his last pay period. The principals at GLS were later convicted of labor racketeering, in part due to its deduction practices.

On April 21, 2010, Tolentino filed a class action against the Westin, alleging it was a joint employer with GLS and responsible for two minimum wage violations: (1) paying housekeepers by the number of rooms cleaned instead of the hours worked; and (2) deducting work visa fees from employees' paychecks. The circuit court granted summary judgment in favor of Westin and the court of appeals affirmed.

First, the court concluded that paying housekeepers by room cleaned rather than by hours worked did not violate minimum wage laws because they were paid at least the minimum wage in gross. For Tolentino, the court simply divided his paycheck by the number of hours he worked, which resulted in an effective hourly rate of \$7.76 that exceeded applicable minimum wage.

Second, the court declined to hold the Westin liable for the work-visa deductions, which caused Tolentino to actually take home far less than minimum wage. The court assumed a joint employer relationship. But, while noting the general rule of joint and several liability for joint employer situations, the court reasoned that the purpose behind the joint employment doctrine is to prevent employers from taking advantage of a separate employment relationship to avoid wage requirements. The court found the

Westin was not aware or complicit in GLS' deduction practices, and, thus, could not be liable for GLS's unforeseeable criminal acts. The court equally applied its analysis under principles of agency and strict liability.

This was a matter of first impression for this court. The court's analysis may be very helpful across industries going forward, as it potentially limits the reach of joint employer liability to those actions known and/or engaged in by each employer, rather than the often assumed joint and several liability that may attach upon any violation by either entity.

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